

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

_____	:	
DERRICK GARY et al.,	:	
	:	
Plaintiffs,	:	Civil No. 10-886 (NLH)
	:	
v.	:	
	:	
MR. CHARLES ALBINO et al.,	:	<b><u>O R D E R</u></b>
	:	
Defendants.	:	
_____	:	

For the reasons expressed in the Opinion filed herewith,

IT IS on this 21<sup>st</sup> day of JUNE, 2010

ORDERED that Plaintiffs' application for proceeding jointly as co-plaintiffs is DENIED; and it is further

ORDERED that Plaintiffs' application to proceed jointly in forma pauperis is DENIED; and it is further

ORDERED that the Clerk of the Court is directed to file the Complaint in the above-captioned action; and it is further

ORDERED that the instant matter is reserved for Plaintiff Gary, and the Clerk shall terminate Plaintiffs Boid and McKinney as Plaintiffs in this matter; and it is further

ORDERED that Plaintiff Gary's application to proceed in this matter in forma pauperis is granted, and Plaintiff Gary is assessed a filing fee of \$350.00 and shall pay the entire filing fee in the manner set forth in this Order pursuant to 28 U.S.C. §

1915(b)(1) and (2), regardless of the outcome of the litigation; and it is further

ORDERED that in each month that the amount in Plaintiff Gary's account exceeds \$10.00, until the \$350.00 filing fee is paid, the agency having custody of Plaintiff Gary shall assess, deduct from Plaintiff Gary's account, and forward to the Clerk of the Court payment equal to 20% of the preceding month's income credited to Plaintiff Gary's account, pursuant to 28 U.S.C. § 1915(b)(2), and each payment shall reference the civil docket number of this action; and it is further

ORDERED that the Clerk of the Court shall serve a copy of this Order by certified mail, return receipt requested, upon the United States Attorney for the District of New Jersey and on the warden of the place of Plaintiff Gary's current confinement; and it is further

ORDERED that the Complaint, Docket Entry No. 1, is dismissed for failure to state a claim. Such dismissal is without prejudice to Plaintiff Gary's filing of an amended complaint complying with the requirements of Rule 8, as detailed in the Opinion filed herewith; and it is further

ORDERED that the Clerk shall administratively terminate this matter by making a new and separate entry on the docket reading "CIVIL CASE TERMINATED"; and it is further

ORDERED that, in the event Plaintiff Gary elects to file an amended complaint, he shall do so within thirty days from the date of entry of this Order. In the event the Clerk receives Plaintiff Gary's timely amended complaint, this Court will direct the Clerk to reopen this matter and will screen Plaintiff Gary's amended pleading for sua sponte dismissal; and it is further

ORDERED that the Clerk shall open two new and separate matters, one for Plaintiff Boid and another for Plaintiff McKinney, designating each of these individuals as "Plaintiff" in his respective new matter and Charles Albino as "Defendant" in each of these new matters; and it is further

ORDERED that the Clerk shall docket the instant Complaint in each such new matter; and it is further

ORDERED that the Clerk shall docket this Order and Opinion filed herewith in each such new matter, as well as in the instant matter; and it is further

ORDERED that the Clerk shall designate, in each such new matter, "Cause: 42:1983 Prisoner Civil Rights" and "Jurisdiction: Federal Question"; and it is further

ORDERED that the Clerk shall assign both these new matters to the undersigned; and it is further

ORDERED that, in the event Plaintiffs Boid and/or McKinney elect to submit amended complaints in their respective new matters, each such Plaintiff shall execute such filing within

thirty days from the date of entry of this Order. Each such filing shall consists of the Plaintiff's amended complaint executed in accordance with the requirements of Rule 8, as detailed in the Opinion filed herewith, and shall also include the Plaintiff's complete in forma pauperis application consisting of the Plaintiff's affidavit and his certified six-month prison account statement; and it is further

ORDERED that the Clerk shall serve copies of this Order and Opinion filed herewith upon Plaintiffs Gary, Boid and McKinney by regular U.S. mail. Each such mailing shall include a blank civil complaint form; and it is further

ORDERED that each of the Clerk's mailings to Plaintiffs Boid and McKinney shall also include a copy of the docket sheet of the new matter opened for that particular Plaintiff and a blank in forma pauperis applications for prisoners seeking to bring a non-habeas civil action; and it is; and it is finally

ORDERED that the Clerk shall administratively terminate the new matters opened for Plaintiffs Boid and McKinney by making a new and separate entry on the docket of each of these matters reading "CIVIL CASE TERMINATED." In the event the Clerk timely receives Plaintiff Boid and/or McKinney's amended complaint(s) and in forma pauperis application(s), this Court will direct the Clerk to reopen the relevant matter and will access the in forma pauperis application and, in such is found in compliance with the

statutory requirements, will screen the received amended pleading(s) for sua sponte dismissal.

/s/ NOEL L. HILLMAN

**NOEL L. HILLMAN**

**United States District Judge**